

[Chaudhuri v. The Curators of the University of Missouri](#), 94-ERA-42 (ALJ Mar. 16, 1995)

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In the Matter of

DR. TANDRA CHAUDHURI,

Date issued: March 16, 1995

Complainant,
94-ERA-42

Case No.

vs.

**THE CURATORS OF THE
UNIVERSITY OF MISSOURI,**

Respondent.

RECOMMENDED DECISION AND ORDER UPON SETTLEMENT

This matter is before the Office of Administrative Law Judges on Complainant's request for hearing dated August 29, 1994, following the investigation and conclusions of the Employment Standards Administration of the Wage and Hour Division. Complainant Dr. Tandra Chaudhuri filed her claim pursuant to the employee protection provisions of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5851. The case was set for hearing before the undersigned administrative law judge on February 14, 1995. On February 7, 1995, counsel for Complainant notified the undersigned that the parties had settled the case and that she wished to dismiss the complaint with prejudice. The purpose of the instant decision and order is to review the proposed settlement and the propriety of dismissal.

I. Standard

The statute requires that, before authorizing dismissal of the claim, the Secretary review a settlement agreement to determine whether it is fair, adequate and reasonable. *Bunn v. MMR/Foley*, 89 -ERA-5 (Sec'y Aug. 2, 1989). Rule 41 of the Federal Rules of Civil Procedure (FRCP), and not 29 C.F.R. § 24.5(e)(4), governs voluntary dismissals. *Avery v. B & W Commercial Nuclear Fuel Plant*, 91-ERA-8 (Sec'y October 21, 1991). A Complainant is entitled to a unilateral, unconditional dismissal of her whistleblower complaint without prejudice in accordance with Rule 41(a)(1)(i), FRCP, only where the respondent has not filed the equivalent of an answer to the complaint or a motion for summary judgement.

Here, the Complainant asks for a dismissal with prejudice. While the respondent has not filed a formal answer or a motion for summary judgment, both parties have participated in the preparation for hearing [see Proposed Joint Scheduling Order] and the finality of the proposed dismissal suggests that review by the Secretary is appropriate. It is error for the administrative law judge to dismiss a complaint, even when based on a stipulated withdrawal, without reviewing the underlying settlement and making a recommendation of whether the settlement is fair, adequate and reasonable. *Hoffman v. Fuel Economy Contracting*, 87-ERA-33 (Sec'y Aug. 4, 1989). It should be noted that the settlement agreement encompasses the claims not only by Dr. Chaudhuri, but also by her husband, Dr. Zinn. Those matters concerning Dr. Zinn are not addressed herein. *Poulos v. Ambassador Fuel Oil Co., Inc.*, 91-ERA-16 (Sec'y Mar. 4, 1992).

II. Terms of Settlement Agreement

Attached hereto is a copy of the proposed settlement agreement between Dr. Chaudhuri and respondent, and follow-up correspondence between the administrative law judge and Complainant's counsel. The parties to the settlement agreement are Dr. Chaudhuri and her husband, Dr. Zinn; the Curators of the University of Missouri; and Dr. James Rhyne. The terms, in summary, are:

1. That Dr. Chaudhuri and Dr. Zinn, jointly and severally, receive \$300,000 and in turn release the University of Missouri and Dr. Rhyne from all claims arising out of their employment at the University, as well as dismiss the district court and administrative complaints arising therefrom, provided, however, that complainant does not release her previously filed worker's compensation claim.
2. That the Complainant will continue in her employment with the University of Missouri until September 5, 1995, unless she secures other employment before that time, in which case her employment with the University will terminate at the earlier date. The University agrees not to take action to terminate her employment before September 5, 1995, using various grounds, including false statements in employment applications, curricula vitae, and statements concerning date of birth, credentials, and the like.
3. That Dr. Rhyne will refer employment inquiries to the person who heads the research group of which Complainant is a member, rather than handling them himself.

4. That after her resignation, the Complainant will retain the same right as the general public to have scientific samples

irradiated by the University.

5. That the Complainant shall retain her intellectual property rights, that is, patent, invention and development rights, in matters created or developed by her at the University, that she would have had absent the current dispute, and the University will cooperate in protecting those rights.
6. That with respect to externally funded grants associated with Dr. Chaudhuri, of which she is the principal researcher, the University will cooperate in assisting her to take those grants to her new employment.

III. Finding and Recommendation

The foregoing terms are found to be fair, adequate and reasonable. I note that Dr. Chaudhuri's complaint arose out of her husband's complaint and her cooperation in helping with that complaint by testifying at his hearing in September 1993. The claim by Dr. Zinn was resolved favorably to him.

The terms of settlement provide essentially that Dr. Chaudhuri will remain employed at her current salary of \$40,000 per year until September 1995, in return for the sum of \$150,000 and the protection of her rights as a scientist to continue her work and take advantage of work she has already done. These terms were negotiated with the assistance of counsel and on their face appear not to be the result of duress, but the honest resolution of disputed contentions. Moreover, the Complainant releases the respondent only as to claims arising out of the facts occurring herein and therefore she retains all remedies that she would have had, had she not brought her complaint in the instant action.

Therefore I find the settlement agreement to be fair, adequate and reasonable, and conclude that it is in the public interest to adopt the agreement as a basis for the administrative disposition of the case. I recommend dismissal of this proceeding with full prejudice.

Christine M. Moore
Administrative Law Judge